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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 18, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222 - Mail Stop 1170
1919 M Street, N.W.
Washington, D.C. 20554

Re: WT Docket 95-157

Dear Mr. Caton:

On this date and on behalf of the Personal Communications Industry Association, I discussed with Suzanne Toller, of Commissioner's Chong's office, issues in the above-referenced proceeding. The substance of the discussion is reflected in the enclosed documents and in documents previously filed in this proceeding.

Should any questions arise concerning this, please let me know.

Very truly yours,

Robert L. Pettit
Counsel for the Personal Communications
Industry Association

Enclosures

cc: Suzanne Toller

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MICROWAVE RELOCATION: FACILITATING THE PROMPT DEPLOYMENT OF AFFORDABLE PCS SERVICE

THE PROBLEM: Although many microwave relocation negotiations are proceeding smoothly, a significant number of incumbent microwave licensees are refusing to negotiate in good faith with PCS licensees to relocate to new facilities. The conduct of these incumbents is substantially increasing the costs of entering the PCS business and is significantly delaying the provision of new PCS services to the American public.

THE ROOT OF THE PROBLEM: Under current FCC rules, microwave incumbents have two years to enter voluntarily into relocation arrangements with PCS licensees (three years in the case of public safety licensees). The voluntary period is followed by a mandatory period that lasts an additional year (two years for public safety licensees) during which the parties must negotiate in good faith. If no agreement has been reached by the end of the mandatory period, the PCS licensee can relocate the incumbent to a comparable facility, provided that it pays for the costs of the relocation.

Many microwave incumbents have responded reasonably to relocation requests by PCS operators and have already reached relocation agreements. However, citing the fact that the voluntary period does not require that negotiations be conducted at all, let alone in "good faith," a number of incumbents are resisting relocation simply to extract huge premiums -- unrelated to their costs -- from PCS licensees. The most egregious example of such overreaching is set forth in the attached letter from the Suffolk County Police Department to Sprint Spectrum, which states that "an additional revenue of $18 million must be included as an inducement to consummate this negotiation in a timely manner."

As the attached colloquy reveals, Senator Hollings, who introduced an amendment on which the FCC's rules were based, "certainly" did not intend for microwave incumbents to delay the negotiation process "purely to obtain more money." Rather, he envisioned simply that incumbents would be compensated for the costs of relocating to reliable replacement facilities. A similar view of the purposes of the relocation process was recently set forth by the Court of Appeals for the D.C. Circuit. In APCO, the court held that microwave incumbents have no right to extort premiums, or "monopoly rents", from PCS companies in the relocation process. See attached.

THE SOLUTION: The simplest solution to the problem is to apply the "good faith negotiations" requirement to both the voluntary and the mandatory periods. Requiring microwave incumbents to act in good faith throughout the negotiations process not only is consistent with Congressional intent in this area; it also is sound public policy. Indeed, it would be unheard of for the Commission to allow any of its licensees to knowingly act in bad faith.

A second option that would preserve the distinction between the voluntary and mandatory periods is for the Commission to state, first, that all parties have a duty to negotiate -- even during the voluntary period -- and, second, that the parameters of the negotiation in

both periods are limited to issues concerning the costs and process of moving the incumbent to reliable replacement facilities. The difference between the two periods would concern the items that fall within each requirement. The duty to provide comparable facilities during the mandatory period and thereafter requires a PCS licensee to pay the cost of relocating only to comparable facilities. For example, PCS licensees would not be required to replace existing analog equipment with digital equipment when an acceptable analog solution exists. By contrast, during the voluntary period, requests by incumbents for upgrades of equipment would be acceptable. However, pursuant to the court's admonition in APCO, the Commission should make certain that negotiations during the voluntary period are limited to such reasonable costs and do not include demands for monopoly rents.

To facilitate the voluntary negotiations, microwave incumbents also should be required during the voluntary period to respond to PCS licensee requests for relocation by providing complete and specific information about their needs for replacement facilities, considerations affecting engineering and frequency coordination, and costs.

PCS licensees have already provided billions of dollars to the U.S. Treasury for the use of spectrum. However, unless the FCC takes immediate steps to encourage reasonable negotiations between PCS providers and microwave incumbents, PCS service to the American public will be needlessly delayed for years.

SUFFOLK COUNTY POLICE DEPARTMENT

TECHNICAL SERVICES SECTION

TELEFAX COVER SHEET

THE MESSAGE CONSISTS OF __0__ SHEETS FOLLOWING THIS COVER.

SHOULD ANY PORTION OF THIS MESSAGE BE RECEIVED POORLY
CONTACT THE SENDER BY VOICE AT (516) 852-6404

DIRECTED TO: Ms. Kathryn Druckar

FROM: D/I Gregory Curto

RETURN TELEFAX AUTOMATIC ANSWER PHONE
(516) 852-6418

Ms. Drucker,

In exchange for the 2 GHz frequencies, Suffolk County requests a total digital microwave upgrade which includes all enhancements with all County Management Information Services requirements as indicated in the information FEDX'd to you on Thursday, Oct.5'95. An additional revenue of $18 million must be included as an inducement to consummate this negotiation in a timely manner.

Sincerely,

D/Insp. Gregory Curto

stand with me in protecting what is important to our country. I urge you to vote to save the COPS Program.

LEGAL SERVICES TO NATIVE AMERICANS

Mr. INOUYE. Mr. President, I seek a few moments in order to seek clarification from my esteemed colleague, the senior Senator from Alaska, with regard to language that is contained in an amendment proposed by my colleague. When the Subcommittee on Commerce, Justice, State and the Judiciary met to consider H.R. 2076, the appropriations bill for fiscal year 1996, Senator STEVENS proposed an amendment to the amendment proposed by the esteemed chairman of the full committee, Senator HATFIELD, relating to the provision of legal services as it affects Native American households.

Mr. STEVENS. Mr. President, my amendment, which was adopted by the Subcommittee on Commerce, Justice, State and Judiciary on September 7, 1995, provides that in States that have significant numbers of eligible Native American households, grants to such States would equal an amount that is 140 percent of the amount such states would otherwise receive. My amendment was necessary in order to prevent a serious reduction in legal services to Native Americans. Under current law, there is a separate, additional appropriation for legal services to the Native American community. The Legal Services Corporation is also given the flexibility to allocate additional resources to States like Alaska, which experience increased costs due to the difficulty of providing legal services to remote populations, many of which are comprised of Native Americans. Given the fact that the Legal Services Corporation, including the separate Native American appropriation, was eliminated the committee's bill, my amendment was necessary in order to ensure the continued provision of legal services to the Native American community.

Mr. INOUYE. Mr. President, I wish to express my deep appreciation to my colleague from Alaska for his efforts in this area, and for recognizing that the significant needs for legal assistance in Native American communities span a broad range of issues, from housing and sanitation to health care and education. In my own State of Hawaii, Native Hawaiians comprise less than 13 percent of the population, but represent more than 40 percent of the prison inmate population. Native Hawaiians have twice the unemployment rate of the State's general population and represent 30 percent of the State's recipients of aid to families with dependent children. Over 1,000 Native Hawaiians are homeless, representing 30 percent of the State's homeless population. Native Hawaiians have the lowest life expectancy, the highest death rate, and the highest infant mortality rate of any other group in the State. Moreover, they have the lowest education levels and the highest suicide rate in Hawaii.

Mr. President, in my State we have the Native Hawaiian Legal Corp. [NHLC], a nonprofit organization established to provide legal services to Native Hawaiian community. NHLC has a 20 year history of providing exemplary legal assistance to Native Hawaiians, and it has long been affiliated with the Native American Rights Fund. Fifteen percent of NHLC's annual funding comes from the Native American portion of the Legal Services Corporation budget. It is my understanding that the language proposed by my esteemed colleague from Alaska is to ensure the continued provision of legal services to Native Americans that are currently being provided through a separate Native American allocation of the funding provided to the Legal Services Corporation. My question of my colleague from Alaska is whether it is his intent that Native Hawaiians would continue to be eligible to receive funds appropriated for the provision of legal services under your amendment, consistent with the current situation under the Legal Services Corporation?

Mr. STEVENS. I thank the Senator for his earlier comments. My colleague from Hawaii, in his capacity as the former chairman of the Indian Affairs Committee, has traveled many, many times to my State of Alaska, and I know that he has come to appreciate the very difficult circumstances under which the vast majority of our native villages live. I know the challenges the Senator from Hawaii faces in trying to meet the needs of native communities in the State of Hawaii, and I therefore understand full well his desire to clarify the meaning of "Native American households". When I proposed this language, it was my intention to ensure that those Native American communities, including native Hawaiian households, currently being served by the Legal Services Corporation would continue to have access to legal services under the block grant approach proposed by Senator HATFIELD. Have I sufficiently addressed my colleague's concerns?

Mr. INOUYE. Mr. President, I wish to thank my colleagues from Alaska, for clarifying this matter for me. I am certain that the native Hawaiian community will be most appreciative of the Senator's clarification.

ABUSES INVOLVING MICROWAVE INCUMBENTS

Mr. BREAUX. I would like to raise an issue that has become of concern to several members of this committee on both sides of the aisle.

Previously, as chairman of this committee and of the Appropriations Subcommittee, the Senator from South Carolina was instrumental in establishing spectrum auctions for new PCS services, and was a guiding force on developing the rules that were adopted by the FCC governing relocation of microwave licensees out of this spectrum.

He is aware, as we have discussed, that certain enterprising individuals have recruited a number of microwave incumbents as clients and now seem to be manipulating the FCC rules on microwave relocation to leverage exorbitant payments from new PCS licensees.

I am advised that if this practice continues unchecked, more and more microwave incumbents are likely to employ these unintended tactics. More importantly, it will reportedly devalue spectrum in future auctions to the tune of up to $2 billion as future bidders factor this successful gamesmanship into their bidding strategy. Previously scored revenue for deficit reduction will be unfairly diverted instead into private pockets.

Would the Senator agree with me:

First, that this type of gaming of relocation negotiations was unintended, is unreasonable, and should not be permitted to continue unchecked;

Second, that the affected parties should attempt to agree on a mutually acceptable solution to this problem;

Third, that if an acceptable compromise cannot be brought forth by the affected parties within a reasonable time period, then either Congress or the FCC should address this matter as quickly as possible with appropriate remedies?

Mr. HOLLINGS. I thank my colleague for raising this issue. As he noted, I offered an amendment on the State, Justice, Commerce Appropriations bill in 1992 on this issue. The electric utilities, oil pipelines, and railroads must have reliable communications systems. The FCC initially proposed to move these utilities' communications systems from the 2 gigahertz band to the 6 gigahertz band without ensuring that the 6 gigahertz band would provide reliable communications.

My amendment, which the FCC subsequently adopted in its rules, guaranteed that the utilities could only be moved out of the 2 gigahertz band if they are given 3 years to negotiate an agreement, if their costs of moving to the new frequency are paid for, and if the reliability of their communications at the new frequency is guaranteed.

Now I understand that some of the incumbent users may be taking advantage of the negotiation period to delay the introduction of new technologies. It was certainly not my intention to give the incumbent users an incentive to delay moving to the 6 gigahertz band purely to obtain more money. I agree with my friend that the parties involved in this issue should try to work out an acceptable solution to this issue. If the parties cannot agree to work out a compromise, I believe that Congress or the FCC may need to revisit this issue.

WOMEN'S BUSINESS PROGRAMS

Mrs. HUTCHISON. Mr. President, I would like to address an important portion of the Hatfield amendment, preservation of Small Business Administration funding for women's business programs.

I believe the issue of women in business needs to be placed in the clearer context.

ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-INTERNATIONAL, INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS, UTAM, INC., ET AL., INTERVENORS

No. 95-1104

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

1996 U.S. App. LEXIS 2377

February 2, 1996, Argued

February 16, 1996, Decided

On Petition for Review of an Order of the Federal Communications Commission.

COUNSEL: John Lane, Jr. argued the cause for petitioner, with whom Ramsey L. Woodworth and Robert M. Gurss were on the briefs.

James M. Carr, Counsel, Federal Communications Commission, argued the cause for respondents, with whom William E. Kennard, General Counsel, Daniel M. Armstrong, Associate General Counsel and John E. Ingle, Deputy Associate General Counsel, were on the brief.

Ray M. Senkowski and Clifford M. Sloan were on the brief for intervenors UTAM, Inc. and Personal Communications Industry Association. Robert J. Butler, Jim O. Llewellyn, John F. Beasley, Lewis A. Tollin, Michael D. Sullivan and William B. Barfield entered appearances.
JUDGES: Before: EDWARDS, Chief Judge, WALD and SILBERMAN, Circuit Judges. Opinion for the Court filed by Circuit Judge WALD.

WALD, Circuit Judge: Over the past several years, the Federal Communications Commission ("FCC" or "Commission") has attempted to devise a plan to allocate spectrum to promote the development of emerging wireless telecommunications technologies without unduly disrupting the services currently utilizing spectrum space. This case involves a challenge to one aspect of the Commission's allocation plan, which has set aside a specific portion of the spectrum for the new technologies, and provided rules for effectuating the relocation of many of the fixed microwave licensees currently occupying the reserved bands. In 1992, the Commission adopted a set of rules requiring current non-public-safety occupants of the newly-designated emerging technologies bands to relocate to other spectrum if an emerging technology licensee needed their current spectrum space, but exempting public safety organizations from this relocation requirement. The Association of Public-Safety Communications Officials ("APSCO") now seeks review of a subsequent order in which the FCC rescinded the public safety exemption, and

thereby subjected public safety organizations, along with all the other fixed microwave licensees, to the risk of mandatory relocation.

Because we find that the Commission based its change in policy on reasoned decisionmaking supported by evidence in the record, we deny APSCO's petition for review.

I. BACKGROUND

In an initial decision not challenged by the petitioners here, the Commission in 1992 proposed to set aside most of the 1850-2200 MHz frequency bands ("reserved bands") of the spectrum for the use of emerging technologies, including Personal Communications Services ("PCS").[1] The reserved bands, however, were already occupied by various fixed microwave licensees, including many public safety organizations. In order to make room in the reserved bands for the new services, the FCC proposed a program providing for the relocation of the current occupants of the band to fully comparable facilities on other spectrum.

In October 1992, the FCC adopted rules governing the transition of the reserved band from its current fixed microwave use to its new emerging technologies use. See First Report & Order and Third Notice of Proposed Rulemaking, 7 F.C.C.R. 6886 (1992) ("First Order"). In August 1993, the Commission adopted a new set of rules further clarifying the transition process established in the First Order. See Third Report & Order and Memorandum Opinion & Order, 8 F.C.C.R. 6589 (1993) ("Third Order").[2] Under the transition plan described in these two orders, a current fixed microwave occupant and a new emerging technology licensee would engage in voluntary negotiations for a set period of time,[3] after which the new licensee could initiate a mandatory negotiation period culminating in the forced relocation of the current occupant to other spectrum. In order to force the microwave licensee to move, however, the new occupant would have to assume all costs for the move, and would have to build and test the comparable new facility. First Order, 7 F.C.C.R. at 6890.

Because of inherent differences between licensed and unlicensed PCS, however, the Commission only provided a one-year negotiation period for incumbent fixed microwave facilities operating in spectrum allocated for unlicensed devices. Id. at 6598.

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[1] PCS, a new form of public mobile service which encompasses a broad range of wireless radio communications services, makes up a significant portion of the current emerging technologies market. Unlicensed PCS apparently cannot operate successfully unless all other spectrum users relocate from the bands allocated for the new service. Licensed PCS, on the other hand, apparently can--to some extent--share spectrum space with others. The extent to which such spectrum-sharing will prove successful involves technical predictions central to this dispute.

[2] The Second Report & Order, 8 F.C.C.R. 6495 (1993), is not relevant to this proceeding.

[3] In its First Order, the Commission solicited comments on the appropriate length of the transition period the FCC should adopt. 7 F.C.C.R. at 6891. In its Third Order, the Commission adopted a transition plan that required an emerging technology licensee to engage in a two-year voluntary negotiation period with the fixed microwave service before instituting the one-year mandatory period. 8 F.C.C.R. at 6595.

Even though this transition plan contained stringent safeguards to protect the interests of all incumbent licensees, the FCC originally took the extra step of providing an exemption which shielded public safety services from any mandatory relocation. The public safety exemption incorporated in the first order, 7 F.C.C.R. at 6891, and reaffirmed in the third order, 8 F.C.C.R. at 6590, would have allowed the exempted facilities to continue operating indefinitely in the emerging technologies band on a co-primary, non-interference basis (meaning that each licensee was under an obligation to avoid interfering with the other). The FCC explained that the public safety exemption grew out of the Commission's hesitation to impose on public safety services "the economic and extraordinary procedural burdens, such as requirements for studies and multiple levels of approvals" that might accompany relocation. Third Order, F.C.C.R. at 6610.

In response to the Third Order, the FCC received nine petitions for reconsideration, which it addressed in a 1994 opinion. Memorandum Opinion & Order, 9 F.C.C.R. 1943 (1994) ("Opinion" or "First Opinion"). In addition to addressing the petitions it received, the FCC, on its own motion, reconsidered the public safety exemption and ordered its repeal. Id. at 1947. Despite the decision to revoke the public safety exemption, the Commission reiterated its belief "that certain public safety entities warrant special consideration because previously they have been excluded from involuntary relocation and because of the sensitive nature of their communications." Id. at 1947-48. In place of the exemption, therefore, the new order established an extended negotiation period for public safety licensees consisting of a four-year voluntary negotiation period followed by a one-year mandatory negotiation. Id. at 1948.[4]

The opinion explains that this new plan accommodates the conflicting needs to clear the spectrum for emerging technologies and to protect the integrity of emergency services. In addition to the extended negotiation period, public safety licensees will enjoy the same safeguards available to all microwave licensees currently operating in the reserved bands: first, the emerging technology licensee must pay all costs associated with the incumbent's relocation (including engineering, equipment and site costs, FCC fees, and any reasonable additional costs); second, the relocation facilities must be fully comparable to the ones being replaced; third, the new licensee must complete all activities, including testing, necessary to operate the new system before relocation; and fourth, if the new facilities in practice prove not to be equivalent in every respect to the old ones, the public safety operation may relocate back to its original facilities within one year and remain there until complete equivalency (or better) is attained. Id. The Commission concluded that this policy "will not disadvantage incumbent public safety operations required to relocate," and will "ensure that essential safety of life and property communications services are not disrupted." Id.

Several groups, including APSCO, petitioned the Commission to reconsider the decision to eliminate the public safety exemption. The FCC addressed each of the petitioners' concerns in its Second Memorandum Opinion and Order denying the petition for reconsideration. See

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[4] In a later opinion, the Commission modified the negotiation period for public safety facilities by shortening the voluntary period to three years and extending the mandatory period to two years (maintaining a five-year cumulative period). Second Memorandum Opinion & Order, 9 F.C.C.R. 7797, 7802 (1994).

Second Memorandum Opinion & Order, 9 F.C.C.R. 7797 (1994) ("Second Opinion"). The Commission restated its position from the first opinion that the revocation of the exemption had resulted from the Commission's realization that it had previously underestimated the difficulty of spectrum-sharing and the problems that could result from a rule which allowed public safety operators to remain in the reserved bands indefinitely. Id. at 7797. The FCC reported that, based on information in the record, the Commission had ultimately determined that "it would be in the public interest to subject all incumbent facilities, including those used for public safety, to mandatory relocation if an emerging technology provider requires the spectrum used by the incumbent." Id.

APSCO now petitions this court for review of the FCC's revocation of the public safety exemption, arguing that the Commission's about-face on this issue was arbitrary and unreasonable, and did not rest upon a reasoned analysis of the record.

II. DISCUSSION

When an agency acts to rescind a standard it previously adopted, a reviewing court will subject that rescission to the same level of scrutiny applicable to the agency's original promulgation. Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 41, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983) ("State Farm"); Telecommunications Research & Action Center v. FCC, 255 U.S. App. D.C. 156, 800 F.2d 1181, 1184 (D.C. Cir. 1986). But if the agency has offered a reasoned explanation for its choice between competing approaches supported by the record, the court is not free to substitute its judgment for that of the agency. Greater Boston Television Corp. v. FCC, 143 U.S. App. D.C. 383, 444 F.2d 841, 853 (D.C. Cir. 1970) ("Where there is substantial evidence supporting each result it is the agency's choice that governs."). Thus, the petitioners here must do more than raise a doubt about the ultimate wisdom of the Commission's decision to repeal the public safety exemption; rather, APSCO must demonstrate that the revocation is unsupported by the record.

At the heart of petitioners' argument is the claim that the FCC's decision to revoke the public safety exemption did not rely on any new studies or technological data that had become available since the time of the initial rulemaking. Because the information available to the Commission in 1992 "did not require the relocation of all public safety licensees," APSCO claims that "this old information similarly provided no basis for the Commission's abrupt change in policy" reflected in the 1994 opinions. Petitioners' Brief at 20. There is a fundamental flaw in APSCO's argument, however; petitioners' claim assumes that if the record does not require a certain result, neither can it support that result. The petitioners have misunderstood the Commission's burden. The FCC need not demonstrate that it has made the only acceptable decision, but rather that it has based its decision on a reasoned analysis supported by the evidence before the Commission. Particularly where, as here, an agency issues a regulation reflecting reasoned predictions about technical issues, logic suggests that the record may well contain evidence sufficient to support more than one possible outcome. See, e.g., Greater Boston, 444 F.2d at 853.

Thus we will affirm the FCC's order if we find that the Commission has offered a reasoned analysis for its ultimate decision to revoke the public safety exemption, and that the proffered analysis is supported by evidence in the record. After reviewing the record, we conclude that the Commission has adequately explained its change in policy, and therefore that its new policy deserves deference.

The Commission, in its second opinion, refers to specific studies in the record that support the decision to subject public safety providers, along with other fixed microwave licensees, to the possibility of forced relocation. Second Opinion, 9 F.C.C.R. at 7800. Specifically, the Commission cites studies submitted by Cox Enterprises, Inc. ("Cox"), and by American Personal Communications ("APC"), regarding spectrum congestion and its impact on the implementation of emerging technologies. Id. For example, the Commission points out that the Cox and APC studies showed that in certain major metropolitan areas, the public safety entities that would have enjoyed the original exemption constitute a large percentage of the incumbent services, and that in some of these cities, the deployment of PCS would likely be impossible if the exemption remained in force. See id. at 7799, 7800. The second opinion also refers to two other comments received by the FCC (from American Mobile Satellite Corporation ("AMSC") and the Personal Communications Industry Association ("PCIA")) noting that the public safety exemption could render the allocated frequency inadequate for PCS deployment. Id. at 7799. Additionally, the Commission cites to comments submitted by Apple Computer, Inc. ("Apple"), and UTAM, Inc. ("UTAM"), concluding that "PCS and, especially, unlicensed nomadic PCS, cannot share spectrum with fixed microwave facilities." Id.

After reviewing the comments in the record supporting the change in policy, the Commission offered the following explanation of its rationale:

> In view of the evidence that the introduction of new communications services that will benefit the public could be precluded unless clear spectrum can be obtained, and that relocation can be accomplished reliably, we continue to believe that it is in the public interest to require all incumbents to relocate if their spectrum is required for new services using emerging technologies.

Id. at 7801. The FCC also noted that the new plan provides ample safeguards to ensure that public safety operations will not be curtailed by any forced relocation. Id. In fact, the provisions guaranteeing that no incumbent will be required to move until the new PCS licensee builds, tests, and assumes all costs for fully comparable facilities for the incumbent, renders debatable the petitioners' claim that public safety providers are significantly injured by the new policy. Although forced negotiation and relocation will undoubtedly generate considerable hassle for an unwilling incumbent, the Commission points out that the end result--brand new facilities fully paid for by a PCS licensee--will often leave the incumbent better off after relocation.[2/]

[2/] We note, as developed at oral argument, that the revocation of the initial exception may cause public safety organizations to suffer an additional injury that may not be cognizable by this court. Under the original program exempting public safety providers from forced relocation, the petitioners would likely have enjoyed substantial

Arguing further that the Commission has not adequately explained its rationale in this case, petitioners point out that in the past we have conditioned our deference to agency decisionmaking with the caveat that "if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." Petitioners' Brief at 16 (citing Greater Boston, 444 F.2d at 852). APSCO alleges that the Commission must offer more than a "barebones incantation" of its conclusion, id. (citing Action for Children's Television v. FCC, 261 U.S. App. D.C. 253, 821 F.2d 741, 746 (D.C. Cir. 1987) ("ACT")), and that in this case, the Commission has failed to do so.

In light of the Commission's reasoned explanation for its change in policy, supported by specific references to the record discussed above, petitioners' reliance on ACT misses the mark. In ACT, the FCC had attempted to explain its termination of commercialization guidelines for children's television merely by stating that the rescission of the guidelines was consistent with deregulation of the industry at large. However, the original guidelines had been expressly justified by a finding that the marketplace could not adequately function when children made up the audience, and the Commission had not attempted to explain its sudden affirmation of "what had theretofore been an unthinkable bureaucratic conclusion." 821 F.2d at 746. Moreover, we suggested in ACT that the FCC could have adequately justified its decision by finding, for example, "that present levels of children's programming are inadequate; that additional commercialization is necessary to provide greater diversity in children's programming; or that increased levels of children's television commercialization pose no threat to the public interest." Id.

In this case, to the contrary, the Commission has expressly found that "it is in the public interest to subject all incumbent ... fixed microwave facilities, including public safety licensees, to mandatory relocation" and that emerging technologies services "may be precluded or severely limited in some areas unless public safety licensees relocate." Second Opinion, 9 F.C.C.R. at 7799. Whether or not these conclusions reflect unassailable analysis on the part of the Commission, the FCC has adequately articulated a reasoned analysis based on studies and comments submitted during the rulemaking process.

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leverage in their voluntary negotiations with PCS providers. Any PCS licensee whose services can only operate in clear spectrum would be forced to pay extraordinary costs, or "rents," to the incumbent, since the PCS operator's license could be rendered virtually useless by an incumbent's refusal to relocate voluntarily. While the petitioners undoubtedly have a significant financial interest in protecting the ability to exact such payments, their loss of rent-seeking potential is hardly a cognizable injury for consideration either by the FCC or by this court since their place on the spectrum was originally derived from a grant from the government.

In fact, the Commission's reference to comments submitted by UTAM expressing concern that the exemption would allow public safety providers to exact payments above and beyond the actual cost of relocation, see First Opinion, 9 F.C.C.R. at 1947, adds further support to our finding that the Commission based its ultimate decision on evidence in the record.

As a final challenge, APSCO argues that the Commission's alleged failure to consider other, less drastic, alternatives to the exemption's repeal rendered the decision arbitrary and unreasonable. Petitioners' Brief at 27-28. As the Commission correctly notes, however, "the fact that there are other solutions to a problem is irrelevant provided that the option selected is not irrational." Loyola University v. FCC, 216 U.S. App. D.C. 403, 670 F.2d 1222, 1227 (D.C. Cir. 1982). Additionally, the FCC in this case did clearly address the alternatives that had been raised during the comment periods. The opinion explains that the FCC considered and rejected the proposals that depended on spectrum-sharing between incumbent microwave services and new emerging technology services. The fact that the Commission might not have addressed and rejected every conceivable approach to the challenge of making room for emerging technologies does not render its decision invalid.

Because the FCC has adequately explained its determination that public safety services occupying the reserved bands of the spectrum should be subject to mandatory relocation provisions, we hereby deny APSCO's petition for review of the Commission's order.

So ordered.